

Message Text

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64

ACTION L-02

INFO OCT-01 ARA-06 ISO-00 IO-10 AID-05 SSO-00 NSCE-00

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O 192320Z JUL 75

FM AMEMBASSY SAN JOSE

TO SECSTATE WASHDC IMMEDIATE 848

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USDEL 013

FOR L-MARK FELDMAN AND ARA/USOAS - MOON

E.O. 11652: N/A

TAGS: OCON, OAS

SUBJECT: SAN JOSE CONFERENCE - RIO TREATY - ARTICLE 2

REF: SAN JOSE 2970

1. AS DEPARTMENT IS AWARE, FIRST PARAGRAPH CEESI LANGUAGE ARTICLE 2 SUPPORTS AT BEST AN IMPLICATION THAT PROCEDURES AVAILABLE IN INTER-AMERICAN SYSTEM SHOULD BE USED FIRST; SECOND PARAGRAPH SPECIFICALLY RECOGNIZES RIGHT OF PARTIES TO REFER DISPUTES OR SITUATIONS TO UNGA OR SECURITY COUNCIL. US AND OTHER DELEGATIONS FELT THAT PRIORITY FOR PROCEDURES OF INTER-AMERICAN SYSTEM SHOULD BE REESTABLISHED IF AT ALL POSSIBLE. KEY TO DOING THIS WAS NEW DRAFT WITH "PRIORITY" PARAGRAPH CLOSELY TRACKING ARTICLE 52(2) OF UN CHARTER (WHICH REFERS ONLY TO SECURITY COUNCIL). AFTER SOME DISCUSSION IN WORKING GROUP EVENING JULY 17, IT WAS TENTATIVELY DECIDED, NOTWITHSTANDING LIMITATIONS OF ARTICLE 52, TO INCLUDE REFERENCE TO UNGA. AS REFTEL NOTED, THAT TEXT WAS OFFERED TO DELEGATIONS FOR COMMENT, BUT NO FORMAL ACTION WAS TAKEN AT THAT TIME.

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2. WORKING GROUP RECONVENED EARLY MORNING JULY 18 TO GIVE FURTHER CONSIDERATION OF DRAFT TEXT. AT THAT TIME ECUADOR ARGUED STRONGLY AGAINST REFERENCE TO UNGA. GOE RATIONALE (WHICH ULTIMATELY PERSUADED MAJORITY OF GROUP DESPITE US, CHILE, BRAZIL OBJECTIONS) BASED ON FACT THAT ARTICLE 52(2) OF UN CHARTER, WHICH ESTABLISHES EXCEPTION TO UN JURISDICTION, REFERS ONLY TO SECURITY COUNCIL. THEREFORE, EXCEPTION IN RIO TREATY ESTABLISHING PRIORITY FOR INTER-AMERICAN SYSTEM SHOULD APPLY ONLY TO SECURITY COUNCIL. (US AND OTHERS HAD ARGUED THAT APPLICABILITY TO BOTH UNGA AND UNSC, AS IN EXISTING ARTICLE 2, SHOULD BE RETAINED.)

3. ARTICLE 2 REVISED IN THIS MANNER SUBMITTED TO GENERAL COMMITTEE IMMEDIATELY FOLLOWING WORKING GROUP MEETING. EL SALVADOR OFFERED AN AMENDMENT WHICH WOULD HAVE REINSERTED REFERENCE TO UNGA. DESPITE SUPPORT OF US, BRAZIL, CHILE, NICARAGUA AND TRINIDAD, AMENDMENT WAS DEFEATED. (ECUADOR VOTED NO, THE REST ABSTAINED. IN OAS SYSTEM AMENDMENTS REQUIRE MAJORITY OF STATES PARTY -- 11 VOTES -- FOR ADOPTION.)

4. WE HAVE CONSULTED INFORMALLY WITH SEVERAL DELEGATIONS AND BELIEVE THERE IS VIRTUALLY NO CHANCE OF REVERSAL ON THIS ISSUE. MAJORITY CLEARLY FEEL ONLY POSSIBILITY OF APPROVAL OF LANGUAGE ESTABLISHING ANY PRIORITY FOR INTER-AMERICAN SYSTEM PROCEDURES WAS IN LANGUAGE BASED ON ARTICLE 52(2) OF UN CHARTER. FROM POINT OF VIEW OF INTER-AMERICAN SYSTEM WE CONTINUE TO BELIEVE THAT VERSION ARTICLE 2 AS ADAPTED IS AN IMPROVEMENT OVER CEESI LANGUAGE. HOWEVER, THERE IS NO DOUBT THAT ECUADOR, PERU AND MOST OTHERS FEEL THAT ARTICLE 2 AS ADOPTED DOES NOT REPEAT NOT PREVENT COUNTRY FROM GOING DIRECTLY TO UNGA. MANY FELT THIS TRUE UNDER ARTICLE 10 OF PRESENT TREATY, IN LIGHT ARTICLES 34 AND 35 OF UN CHARTER; SEVERAL HAVE NOTED TO US THAT THERE IS NOTHING TO BE DONE IN ANY EVENT IF A MEMBER STATE DECIDES TO BYPASS INTER-AMERICAN (RIO TREATY) PROCEDURES TO GO DIRECTLY TO UN, AS HAS OCCURED ON SEVERAL OCCASIONS IN THE PAST. WE WILL SUBMIT FOR YOUR APPROVAL LANGUAGE TO BE INCORPORATED IN US STATEMENT AT TIME OF VOTING ON TREATY.
TODMAN

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